

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

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| ITA Nos.1535 & 1536/Bang/2019 |
| Assessment years : 2011-12 & 2012-13 |

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| The Income Tax Officer, Ward 5, Davangere. | Vs. | Shri R.S. Shekarappa, # 75, Kenchamba Tower, College Road, Nittuvalli New Extension, Davangere – 577 002. PAN: AZEPS 8988G |
| APPELLANT | | RESPONDENT |

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| ITA No.1678/Bang/2019 |
| Assessment year: 2011-12 |

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| Shri R.S. Shekarappa, # 75, Kenchamba Tower, College Road, Nittuvalli New Extension, Davangere – 577 002. PAN: AZEPS 8988G | Vs. | The Income Tax Officer, Ward 5, Davangere. |
| APPELLANT | | RESPONDENT |

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| Revenue by | : | Shri Priyadarshi Mishra, Addl. CIT(DR)(ITAT), Bengaluru. |
| Assessee by | : | Shri R. Chandrashekar, Advocate |

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| Date of hearing | : | 21.02.2022 |
| Date of Pronouncement | : | 21.02.2022 |

ORDER

Per Bench

ITA Nos.1535 & 1536/Bang/2019 are appeals by the revenue against the separate orders of the CIT(Appeals), Davangere dated 27.03.2019 for the assessment years 2011-12 & 2012-13. The assessee is in cross appeal for the AY 2011-12.

2. First we take up the cross-appeals by revenue and assessee for the AY 2011-12.

3. There is a delay of 44 days in filing the appeal by the assessee before the Tribunal. The assessee explained that the due date for filing the appeal was 9.6.2019 and he had paid the appeal fees of Rs.10,000 on 5.6.2019 itself. The appeal papers were sent by his counsel duly prepared for his signature, but due to work pressure and business travel, he overlooked the same, he was travelling and the appeal papers were with his employees during that period. After his signatures, the papers were immediately handed over to his counsel for filing on 23.7.2019 and thus there was a delay of 44 days.

4. We have heard both the parties on condonation of delay. In our opinion, there is good and sufficient reason for delay in filing the appeal before the Tribunal. Accordingly, we condone the delay in filing the appeal and admit the appeal for adjudication.

5. The first ground in the **Department's appeal for AY 2011-12** is that the CIT(Appeals) erred in deletion of Rs.33 lakhs brought to tax as unexplained investment. This amount of Rs.33 lakhs was paid by assessee by cheque to Mr. H.B. Ramachandra and duly recorded in the books of account and this transaction was done on behalf of assessee's

landlords with whom he has entered into an agreement of sale and they have in turn given him a General Power of Attorney (GPA). In our opinion, this payment of Rs.33 lakhs is duly accounted in books of account of the assessee and the AO without examining the parties concerned made an addition on this count which is inappropriate. Being so, the CIT(Appeals) deleted the same on the reason that it was duly recorded in the books of account as payment by cheque. We do not find any infirmity in the order of the CIT(Appeals) and the same is confirmed. This ground of the revenue is rejected.

6. The next ground is regarding deletion of Rs.66 lakhs brought to tax as unexplained investment. The assessee has made payment of Rs.60 lakhs to various persons and the same is accounted for. However, the assessee has not shown the above details in his return of income. All the columns except the income and tax computation part were mentioned as zero. It was the observation of the AO that the assessee is duty bound to fill up all the columns in the return of income, but the AO has filled it with zero figure. Therefore the AO made addition of Rs.66 lakhs.

7. Before the CIT(Appeals), the assessee pleaded that all the above transactions are recorded in books of account and it is not unaccounted payment. Accordingly the CIT(A) deleted the addition.

8. The Id. DR submitted that the assessee has to prove that these are duly accounted in books of account and there is no escapement of income since the assessment was reopened u/s. 147 of the Act.

9. In our opinion, the burden is cast upon the assessee to show that these transactions are duly accounted in books of account. On failure of assessee prove that it is accounted, the AO made the addition. However, the CIT(Appeals) deleted the addition without recording how it was

explained by the assessee before him. In view of this, we remit this issue to the AO with a direction to the assessee to prove that these transactions are duly recorded in books of account. This ground is allowed for statistical purposes.

10. Next ground is regarding deletion of Rs.1 crore brought to tax as unaccounted receipts of advance on the reason that no proceedings were initiated on other parties available. The facts are that during the course of survey, an agreement entered by assessee with Shri S. Ganesh Rao, Shri Shivamurthy and Shri K. Nagaraj was impounded. This agreement was entered on 25.2.2011 for purchase of sites in RS No.212/1P1 and 214/1C at Avaragere as per which assessee received Rs.1 crore as advance and balance amount @ Rs.500/sq.ft. to be paid. The assessee in his reply dated 21.3.2016 has declined to have received the amount. It was stated that it was prepared as per negotiation between the parties and later it was not executed and none of the buyers have signed and the lands are not alienated. It is only rough plan. Parties have given declaration and statement to this effect. However, the AO rejected the claim of assessee for the following reasons:-

- “1. The agreement is prepared not on rough paper. It is prepared on stamp paper, which has got statutory acceptance.
2. The amount of Rs. 1 crore is clearly mentioned to have received.
3. It is signed by assessee and one witness. It is normally not signed by other parties as it will be with them in original as promissory note. In the agreement copies filed by assessee during the course of assessment in some other cases, only assessee has signed and not other party. The assessee cannot take different stands.

4. The lands are alienated or not, whether it is based on rough plan, has no much bearing, since the terms of agreement cover all these aspects as for as terms of balance payments are concerned.
5. The parties were summoned by this office. However, none of them turned up. Only Shri Ganesh Rao has written a letter requesting to furnish the copy of his statement recorded during the assessment proceedings for AY 2012-13. It is pertinent to mention that, in his statement recorded on 26/3/2015, Shri Ganesh Rao has stated that he does not remember the details of the transaction entered into with the assessee. However, he has not categorically denied having paid the amount or not having entered into agreement for sale. As far as the declaration of the parties concerned, it will be convenient for them as they have also not accounted the same.”

11. The CIT(Appeals) deleted the addition by observing that the assessee denied the transaction. Further statements from 4 parties were recorded and these statements showed that the persons were of ordinary means and not in a position to advance such a sum. One party partly denied the transaction. All the parties were not examined. The document was signed by the assessee and only one witness and other parties had not signed. In our opinion, the AO has not gathered all supporting documents to allege that assessee has received Rs.1 crore on account of impugned transaction. Being so, the material gathered by the AO is not sufficient to fasten the liability on the assessee. Accordingly, deletion of this amount by the CIT(Appeals) is justified. This ground of the revenue is dismissed.

12. The **last ground in the revenue's appeal** and **the only issue in the assessee's appeal for AY 2011-12** is regarding CIT(Appeals) sustaining the addition of Rs.20,79,000 out of the total addition made by the AO at Rs.60,74,000 on the basis of entries in the impound material.

The facts of the issue are that in the impound material RS49 which is a ledger containing ledger accounts of parties to whom loan was given / taken. The assessee has not disputed the ledger as belonging to him. The assessee accepted the accounting transactions, balance unaccounted transactions were not accepted. The CIT(Appeals) recomputed the interest from the assessment amounting to Rs.20,79,000 to the extent AO had provide details and called for assessee's explanation and sustained the same.

13. We have heard both the parties. The assessee before the AO accepted only certain transactions and denied the various entries found in the impound material stating that it is a kachha book and he has asked for cross-examination without giving their PAN/address which is unacceptable. and out of it. In the interest of justice, we remit this issue to the AO to cause necessary enquires on the assessee. The assessee is directed to cooperate with the department and furnish necessary proof, if he fails to do so, the AO is at liberty to sustain the entire addition. With these observations, the issue is remitted to AO for fresh consideration.

14. In the result, the appeal by the revenue is partly allowed and assessee's appeal for AY 2011-12 is allowed for statistical purposes.

ITA 1536/Bang/2019 (Revenue's appeal AY 2012-13)

15. The revenue has raised the following grounds:-

- “1. The order of the Commissioner of Income Tax(Appeals), Davangere, is opposed to the law and not on the facts and circumstances of the case.
2. The CIT(A) erred in deleting the addition made in the status of Individual without considering the fact that the assessee failed to furnish the details of property with respect to

partition deed, ownership details/ inheritance in respect of HUF status.

3. The CIT(A) erred in deleting the entire unaccounted receipts of the advance amounting to Rs. 2,44,92,240/- even though the AO in his reply dated 13.05.2016 has clearly mentioned that 1 Crore pertains to AY 2011-12 has been brought to tax for AY 2011-12. The CIT(A) ought to confirmed the balance of Rs. 1,44,92,240/7,,
 4. The CIT(A) erred in deleting the addition of Rs. 1,00,60,000/- without giving opportunity to the AO to cross examine the submission made before the CIT(A).
 5. The CIT(A) erred in deleting the addition of Rs. 12,60,000/- without considering the fact that the AO has made the addition where the payment has not found place in the cash book.
 6. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order be restored.
 7. The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.”
16. The first ground is general in nature.
17. The second ground is regarding deletion of addition made in the status of individual by the CIT(Appeals) in the absence of details furnished by the assessee in respect of HUF status.
18. The facts of the issue are that during the course of survey operation conducted on 6.6.2012, certain documents loose sheets etc., were impounded out of which about 16 set of copies of the sale deed executed by R.S. Shekharappa as Kartha of the HUF were found and impounded. In response, the assessee furnished the details explaining the ownership of

the land bearing Sy.no.241 /4 and 240/1A2 which were converted into sites and sold in the F.Y. 2011-12 and the proceeds of Rs.36,50,000/- which were accounted in the books of R.S. Shekharappa (HUF) and income derived thereon also was declared in the return of income filed by Sri. R.S. Shekharappa (HUF). The fact was confirmed by Kartha R.S. Shekharappa (HUF) in para 8 of the Affidavit executed on 23.3.2015. According to the assessee, the total value of sale consideration received out of the sale of 16 sites as per impounded material prepared by AO is Rs.38,27,000/-, whereas the correct amount is Rs.36,50,000/- which is duly accounted and declared in the books of accounts of R.S. Shekharappa (HUF). The AO while arriving at the income of R9.97,71,962 failed to appreciate that the sale consideration received by HUF as per impounded material prepared by the A.O. is Rs.38,27,000 and not Rs.97,71,962. The sale consideration received to the extent of Rs.38,27,000 by HUF was proposed to be assessed in the hands of assessee individual, against which the A.O. has made addition of Rs.97,71,962/- without any basis.

19. The Id. AR submitted that the A.O. ought to have appreciated the fact that the sale consideration received is supported by the sale deed and accordingly the sale consideration as per the sale deed and supported by impounded material Annexure 'I' is Rs.38,27,000 and not Rs.97,71,962 which is required to be assessed in the hands of HUF and not the assessee. He submitted that it is pertinent to note that it is not how this addition has been made and the working is not available in the order of the AO, who has only discussed whether the transactions relating to particular land should be in the status of HUF or INDL.

20. On appeal before the CIT(Appeals), the assessee further submitted that as on the date of survey, i.e., 06/06/2012, the final accounts for the AY 2012-13 was completed and entry of the transactions already made. The

CIT(Appeals) observed that the assessee has been regularly maintaining books of accounts and filing his return of income both in the capacity of Individual and as Kartha of HUF in time. The AO had all the material before him. He has not rejected the Return of Income pertaining to HUF nor has he given credit to the taxes paid. He has accepted the Return of Income filed in the status of HUF in which these transactions are recorded. Having done so, it is not open to assess the income of the said transaction in another status. Therefore, he deleted the addition made by the AO.

21. Against this, the revenue is in appeal before us. The contention of the Id. DR is that the CIT(Appeals) has not verified whether the said amount has been disclosed in the return of the HUF or not. As such, he submitted that the issue may be remitted to AO for re-examination.

22. The Id. AR submitted that in the earlier year the said income has been disclosed in the hands of HUF. As such, following the same, there cannot be any addition in the hands of the assessee.

23. After considering the rival submissions, we are of the opinion that it is appropriate to remit the issue to the AO for fresh consideration and decision in accordance with law after duly verifying the return of HUF. Sufficient opportunity of hearing be provided to the assessee.

24. The third ground is regarding deletion of entire unaccounted receipts of advance of Rs.2,44,92,240 though the AO clearly mentioned that Rs.1 crore pertains to AY 2011-12 and balance of Rs.1,44,92,240 ought to have been brought to tax. This issue for the AY 2011-12 has been remitted to the AO for fresh consideration and accordingly for this A.Y. also remitted to the AO for fresh decision for the present assessment year also.

25. Ground No.4 is with regard to deletion of addition of Rs.1,00,60,000 by the CIT(Appeals) on the basis of submissions by the assessee before him and without affording opportunity to the AO to cross-examine.

26. The facts of case are that based on the sheet containing the details and the particulars of the payment made marked as Annexure 'B' of the impounded material, the AO called for the assessee to explain the same. The assessee filed a letter dated 14.03.2015 along with the bifurcation of payment made by the R.S. Shekharappa (HUF), R.S. Rakesh, K.R. Dyavappa and Sri. Hanumanthappa. He also filed confirmation letters from these persons confirming the total payments made by them. The Id. AR submitted that the amount relating to Sri. Halappa of Rs.60,000/- was paid on 5.4.2011 by HUF. Rs. 10 lakhs was paid to Sri. Ningappa on 26.5.2011 as per the said statement. The payment made to Sri. Ningappa on 26.5.2011 is Rs.10 lakhs but not Rs. 1 crore as contained in the statement impounded during the course of survey. He submitted that instead of mentioning Rs.10 lakhs, it is by mistake typed as Rs. 1 Crore, which is a typographical error. The amount involved in actual transaction is Rs. 10 lakhs as supported by the material evidence such as voucher duly signed by Sri. Ningappa. The A.O. failed to appreciate the fact that the payment of Rs.60,000/- and Rs. 10 lakhs are explained in the statement showing the details of the payments from the books of account produced before the A.O. wherein the payment of Rs. 10 lakhs made to Sri. Ningappa is recorded. He further submitted that the A.O. is not justified in adopting the figures of Rs. 1 crore instead of Rs.10 lakhs as payment made to Sri. Ningappa, since the entire amount of Rs. 10 lakhs and Rs.60,000/- are explained and duly accounted in the books of accounts of respective persons viz. Rs.60,000/- in the hands of HUF and Rs.10 lakhs in the hands

of Individual. Therefore the addition of Rs.1,00,60,000/- made by the A.O. to the total income is unwarranted and uncalled for and same requires to be deleted.

27. After considering the submissions of the assessee and examination of the assessment records, the CIT(Appeals) observed there is a sheet of paper apparently printed from a computer which has details of payments, which reflects Rs.1,00,00,000/- whereas in the books the same is reflected as Rs.10,00,000/-. The AO has held the same as unaccounted. He noted in the same sheet there is a payment to the same party on 09/05/2011 for an amount of Rs.10,00,000/- and the same has been accounted in the books as Rs.10,00,000/-. A reference to the ledger account under the head "Site Advance" reveals that the total payments made during the year is around Rs.66 Lakhs. From all these, the CIT(Appeals) held that the entry in the generated list is a typographical error and the same is not supported by corroborative evidence. Hence the addition was deleted by the CIT(Appeals). Against this, the revenue is in appeal before us.

28. After hearing both the parties, we are of the opinion that the submissions of the assessee before CIT(Appeals) was not confronted to the AO. Hence the issue is remitted to the AO for reconciliation whether the amount is Rs.1 Crore or Rs.10 lakhs as claimed by the assessee and for fresh decision accordingly.

29. The last ground is that the CIT(Appeals) erred in deleting the addition of Rs.12,60,000 ignoring the fact that this payment did not find a place in the cash book. After hearing the rival submissions, we remit this issue to the file of AO to examine whether this payment is accounted or unaccounted with reference to books of account. If it is found to be unaccounted, the AO has to make the addition. Ordered accordingly.

30. In the result, the revenue's appeal for AY 2012-13 is allowed for statistical purposes.

31. Thus, the appeals by the revenue for AY 2011-12 is partly allowed and for AY 2012-13 is allowed, while the assessee's appeal for AY 2011-12 is allowed for statistical purposes.

Pronounced in the open court on this 21st day of February, 2022.

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 21st February, 2022.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.